No. 49

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE WESTERN UNION TELEGRAPH COMPANY,
PETITIONER

v.

KATHARINE F. LENROOT, CHIEF OF THE CHILDREN'S BUREAU, UNITED STATES DEPARTMENT OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

INDEX

CITATIONS

Cases—Continued.

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OPINIONS BELOW

The opinion of the district court (R. 17–30) is reported in 52 F. Supp. 142. The opinion of the circuit court of appeals (R. 34–39) is reported in 141 F. (2d) 400.

QUESTION PRESENTED

Whether, within the meaning of the Fair Labor Standards Act of 1938, petitioner ships in interstate commerce "goods" "produced" in its telegraph offices.

STATUTE INVOLVED

Sections 3 (i), 3 (j), and 12 (a) of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. 201), are the statutory provisions chiefly involved. They read as follows:

SEC. 3. As used in this Act—

* * * * *

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

* * * * *

SEC. 12. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, no producer, manufacturer, or dealer shall ship or deliver for

shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

* * * * *

STATEMENT

This case arises upon a complaint filed by respondent, the Chief of the Children's Bureau, United States Department of Labor, to restrain petitioner from violating the child labor provisions of the Fair Labor Standards Act. The facts, which were stipulated (R. 6–12), may be summarized as follows:

1. *Business of Defendant.*—Petitioner is engaged in the transmission and delivery of telegraph messages throughout the United States and in foreign countries (R. 6). It operates public telegraph offices located in large and small communities at which messages are received from the public over-the-counter, by telephone, by telegraphic tie lines, and from petitioner's messengers who call for messages at its patrons' request (R. 6–7).

In the public offices petitioner's employees handle and work on the messages before transmitting them. They write on the appropriate telegraph blanks all messages received by telephone and some received over-the-counter. (R. 7–8.) In some cases, petitioner's employees correct misspelled or illegible words, combine or separate words where necessary, and, with the senders' permission, clarify or shorten messages by changing, adding, or subtracting words (R. 8). Symbols are placed on all messages to show the date and time of filing, the number of words, the class of telegraph service and the charge (R. 8).

The messages are then sent to a message center in the same community for transmission to their destination. This is done in one of two ways. In many instances an employee in the public office transforms the written message into electric impulses which flow through a telegraphic circuit connecting the public office with the center and cause a teleprinter in the center to reprint the message. (R. 8–9.) In other public offices the original message with the notations added by petitioner's employees is itself placed in a carrier capsule which is delivered to the message center through a pneumatic tube (R. 9).

At the message center the messages are routed by writing on each form the name or symbol of the proper outgoing circuit, and they are then dispatched to the appropriate message centers in other cities by means of teleprinter, multi-

plex printer or Morse code (R. 9–11). From the second center the messages are transmitted to public offices for delivery. Usually delivery to the addressees is made by messengers employed in the public offices. (R. 11.) The carriage is then complete.

A substantial proportion of the telegraph messages originating at each of the offices is transmitted by petitioner in interstate commerce before delivery (R. 11).

2. *Oppressive child labor.*—Approximately 15,000 telegraph messengers are employed in 3,100 of petitioner's public offices to collect and deliver telegraph messages (R. 7). The large majority use bicycles in the performance of their work but petitioner also employs messengers to collect and deliver messages on foot and in motor vehicles (R. 7).

Under section 3 (l) of the Fair Labor Standards Act the employment of children less than 16 years old is oppressive child labor. Under Child Labor Order No. 2, which was issued by the Chief of the Children's Bureau pursuant to the authority granted by section 3 (l), it is also oppressive child labor to employ children under 18 as drivers of motor vehicles (Code of Federal Regulations, 1939 Supp., Title 29, c. 4, Part 422, sec. 422.2). Nevertheless, petitioner employs many children less than 16 years old in its public offices as messengers, and many others between

16 and 18 years old as drivers of motor vehicles (R. 11–12).

Proceedings below.—The district court ruled that the transmission in interstate commerce of telegrams originating in public offices in which oppressive child labor is employed is a violation of Section 12 (a) of the Fair Labor Standards Act (R. 17–30). Accordingly, the district court entered a judgment restraining petitioner from shipping in interstate commerce telegraph messages produced by petitioner in any of its public offices in or about which oppressive child labor had been employed within 30 days of such transmission (R. 30–32).

On appeal, the Circuit Court of Appeals for the Second Circuit affirmed the judgment of the district court (R. 39).

SUMMARY OF ARGUMENT

Petitioner concedes that oppressive child labor is employed at its public offices. Its only contention is that "goods" are not "produced" there within the meaning of Section 12 and that it does not "ship" anything in interstate commerce.

Whatever the normal connotations of "goods" and "produced," their meaning in Section 12 is controlled by the statutory definitions which Congress supplied. Section 3 (i) defines "goods" to include "articles or subjects of commerce of any character." In both common and legal usage

the "ideas, wishes, orders, and intelligence" (*Western Union Tel. Co.* v. *Pendelton*, 122 U. S. 347, 356) carried by petitioner are "subjects" of interstate commerce; and the broad sweep of the words as well as the legislative history shows that in this Act the term "subjects of commerce" was used in its broadest sense. Likewise, the definition of "goods" clearly comprehends the regulated electric impulses into which the messages are converted for transmission to other States.

Section 3 (j) defines "produced" to include "handled, or in any other manner worked on." Petitioner's employees in its public offices aid in the composition of messages, write them on blanks, mark the written messages, and transform them into electric impulses before sending them in commerce. Thus, they "work on" and "handle" the "goods" in the most literal sense.

Likewise, the "goods" are "shipped" by petitioner. "Ship" is a colorless word meaning nothing more than to transport or to send. The Act does not define it, and in Section 12, therefore, "ship" must take its color from the express definitions of "goods" and "produced". Since they clearly apply to petitioner's activities, "ship" must also be given a meaning which is applicable. Certainly petitioner sends messages and it is correct also to say, as this Court has done, that it transports them. *Western Union Tel. Co.* v. *Texas*, 105 U. S. 460, 464.

The legislative history of the child labor provisions of the Act requires that the statutory definitions be given full scope. Nothing in the hearing or debates indicates that the Congress intended to exempt the communications industry; consequently no such exemption can be read into the Act.

Petitioner's argument rests entirely on the absence of an express prohibition against the employment of children in establishments ordinarily regarded as engaged in commerce as distinguished from production. The legislative history of the Act demonstrates, however, that the omission is not indicative of Congressional purpose to exclude from the coverage of the child labor provisions establishments engaged both in commerce and in production of goods as defined by the Act.

ARGUMENT

PETITIONER IS VIOLATING SECTION 12 (a) OF THE FAIR LABOR STANDARDS ACT

Section 12 (a) of the Fair Labor Standards Act provides:

> * * * no producer * * * shall ship or deliver for shipment in commerce any goods produced in an establishment * * * in or about which * * * oppressive child labor has been employed * * *.

Admittedly, oppressive child labor has been and is employed in and about petitioner's offices. Congress unquestionably has constitutional power to reach it; for petitioner is engaged in interstate commerce. *Pensacola Tel. Co.* v. *Western Union Tel. Co.*, 96 U. S. 1; *United States* v. *Darby*, 312 U. S. 100. It is not denied that the public offices described above are "establishments." Consequently, the only issues presented are whether any "goods" are "produced" in the public offices, and whether petitioner is a "producer" who "ships" "goods" in interstate commerce within the meaning of the Act.

We submit that the courts below were correct in answering these questions affirmatively. Messages containing ideas, orders, and intelligence are worked on in petitioner's offices and sent to addressees in other States. Petitioner pitches its case on the argument that it is engaged in commerce and not in the production of goods. We shall show, however, that such messages are "goods" and such handling is "production" under the express definitions contained in the Act. The colloquial meaning, if different, must give way to the express statutory definitions which Congress has supplied. *Fox* v. *Standard Oil Co.*, 294 U. S. 87. Moreover, both the remedial purposes of the Act and its legislative history show that Congress intended the express definitions to be given full effect.

A. BY EXPRESS STATUTORY DEFINITION THE MESSAGES HANDLED OR WORKED ON BY PETITIONER AND THE ELECTRICAL IMPULSES INTO WHICH THEY ARE CONVERTED ARE FOR THE PURPOSES OF SECTION 12 (A) "GOODS" "PRODUCED" BY IT AND "SHIPPED" IN COMMERCE

1. *The messages and electrical impulses transmitted by petitioner are "goods"*

Section 3 (i) provides that as used in the Act—

> "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof * * *.

It is our position that (a) the ideas, wishes, and orders which petitioner transmits and (b) the regulated electric impulses into which it converts the messages for transmission are both subjects of commerce within this definition.

(a) It would seem too clear for argument that a message may be a "subject of commerce." In *Gibbons v. Ogden*, 9 Wheat. 1, 229–230, Mr. Justice Johnson termed intelligence a commodity, and referred to it as a "subject" of commerce, saying:

> Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

Before this Act became law, the Court had recognized in other leading cases that news, ideas, and

intelligence move in interstate commerce no less than tangible articles of trade. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 106–107, *Indiana Farmer's Guide Co.* v. *Prairie Co.*, 293 U. S. 268, 276; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128–129. Specifically, in cases involving telegraph companies the Court had said that the messages passing over telegraph wires "constitute a portion of commerce itself" (*Western Union Tel. Co.* v. *James*, 162 U. S. 650, 654) and that "ideas, wishes, orders, and intelligence" are the "subjects" of the interstate commerce in which telegraph companies engage (*Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347, 356).

The term "subjects of commerce" may, therefore, have been used in the Fair Labor Standards Act to include messages; the decisions referred to show that the term is appropriate for that purpose. That it was so used is apparent from Section 3 (i) itself. The wording of the definition demonstrates that the term was used in this Act in its broadest sense, that it was intended to embrace everything that might be a subject of interstate commerce. This is manifest not only from the sweep of the words—it would be difficult to conceive a broader definition—but also from the concluding phrase "articles or subjects of commerce of any character," which expressly negatives the suggestion that only some kinds of subjects of commerce are included.

The legislative history of Section 3 (i) also proves that Congress used the term "subjects of commerce" in the broadest possible sense. When the Black-Connery Bill was introduced, it defined "goods" as "goods, wares, products, commodities, merchandise or articles of trade of any character" (Section 2 (a) (21) of S. 2475 and of H. R. 7200, 75th Cong., 1st sess.). The Senate Committee on Education and Labor changed "trade" to "commerce" and added the words "or subjects" after the word "articles," thus putting the definition into its present form. See S. 2475, Committee Print to Accompany S. Rep. 884, 75th Cong., 1st Sess. This deliberate insertion cannot be viewed as without significance. It constitutes, as the court below held (R. 37), "unmistakable evidence of a purpose to extend the definition of subdivision (i) to everything which had been considered a 'subject of commerce': that is, to whatever Congress could regulate as such a subject." Plainly, telegraphic messages are such a subject and are therefore "goods" within the meaning of the Act.

(b) It is equally plain that the electric impulses into which the sender's words are transformed are "subjects of commerce" and therefore "goods" within the meaning of the Act. Electric power is a commodity and a subject of commerce. *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165; cf. *Fisher's Blend Station* v. *State Tax Comm.*, 297 U. S.

650, 655; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. If oppressive child labor were employed at a generating plant from which electric power was transmitted to another State, no one would deny that the power company shipped in commerce "goods produced in an establishment in or about which" oppressive child labor had been employed. *Canfield* v. *West Texas Utilities Co.*, 44 F. Supp. 847 (N. D. Tex.); *Richardson* v. *Delaware Housing Assn.*, 6 Wage Hour Rept. 473 (S. D. Fla. 1943). The case stands the same where the electric impulses convey intelligence rather than energy; such impulses like all electric power are "goods."

Petitioner concedes (Br. p. 32) that its telegrams carried for its patrons and the electric impulses in which they are conveyed are "subjects" of interstate commerce in the normal sense of the word. In the court below, petitioner sought to limit the meaning of "subjects of commerce" in the Fair Labor Standards Act by arguing that the seven preceding words in the definition refer to tangible things and that, therefore, under the *eiusdem generis* rule "subjects" must also be read to refer only to tangible things. But whatever utility the *eiusdem generis* rule retains today (see *United States* v. *Gilliland*, 312 U. S. 86, 93; *Securities & Exchange Comm.*

v. *Joiner Corp.*, 320 U. S. 344, 350–351), it is inapplicable to the instant case. Congress defined "goods" to include "wares, products, commodities, merchandise, or articles or subjects of commerce of any character." The words "of any character" forbid the inference that all the things that are listed have some common characteristic; those words expressly state that regardless of *genus* all articles or subjects of commerce are to be regarded as "goods."

Petitioner has changed its ground. It now contends that what Congress had in mind in defining "goods" was "some *res*, tangible or intangible, which is produced, transported and sold to be consumed, in competition or potential competition with other sales of similar products" (Br. p. 33). As a matter of textual analysis there is no basis for this conclusion. And although one of the principal reasons for the passage of the Fair Labor Standards Act was the inability of the States to achieve fair labor standards within their own borders in the face of the depressing competition of cheap goods from States with lower standards, there is no reason to believe that Congress intended to regulate only those subjects of commerce which enter into commercial competition. The power under the commerce clause is far broader. Many subjects of commerce are non-commercial. *Caminetti* v. *United States*, 242 U. S. 470; *United States* v. *Hill*, 248 U. S. 420. See also

Lottery Case, 188 U. S. 321; *Hoke* v. *United States*, 227 U. S. 308; *United States* v. *Simpson*, 252 U. S. 465; *Brooks* v. *United States*, 267 U. S. 432; *United States* v. *South-Eastern Underwriters Assn.*, 64 S. Ct. 1162, 1172. The language of Section 3 (i) and its legislative history show, as we have pointed out above (pp. 11–12), that the Congress intended "goods" to include everything it had power to regulate as a subject of commerce. The lower courts have uniformly recognized that to limit the definition of "goods" to those which are sold in commercial competition would seriously restrict the coverage of the Act in a way in which Congress cannot have intended. *Walling* v. *Haile Gold Mines Inc.*, 136 F. (2d) 102 (C. C. A. 4); *Fox* v. *Summit King Mines*, 143 F. (2d) 926 (C. C. A. 9, 1944); *Fleming* v. *Atlantic Co.*, 40 F. Supp. 654 (N. D. Ga.), affirmed, 131 F. (2d) 518 (C. C. A. 5); *Hamlet Ice Co.* v. *Fleming*, 127 F. (2d) 165 (C. C. A. 4), certiorari denied, 317 U. S. 634; *Chapman* v. *Home Ice Co.*, 136 F. (2d) 353 (C. C. A. 6), certiorari denied, 320 U. S. 761.

There is, moreover, a second answer to petitioner's contention. It is a matter of common knowledge that petitioner does in fact carry reports, news and other intelligence which are subjects of trade and which compete with similar reports transported by other means of communication.

2. Petitioner "produces" goods within the meaning of Section 12 (a)

As the courts have repeatedly recognized,[1] the Act expands the term "produced" beyond its normal connotations; Section 3 (j) provides:

> "Produced" means produced, manufactured, mined, handled, or in any other manner worked on * * *.

There is no incongruity in speaking of a message as a thing "produced." Congress itself uses the word to cover intellectual productions in exempting from Section 12 "any child employed as an actor in * * * theatrical productions" (Section 13 (c)). But even if petitioner is not to be regarded as participating in the production of the ideas conveyed by telegram, certainly it not only "handles" but "works on" the message; its employees transform the spoken words of the sender, or his writing, into the regulated electric impulses which alone are transmitted across the State lines. Thus to convert a message into meaningful electric pulsations which

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[1] *Bracey* v. *Luray*, 138 F. (2d) (C. C. A. 4); *Fleming* v. *Kenton Loose Leaf Tobacco Warehouse Co.*, 41 F. Supp. 255 (E. D. Ky.); *Fleming* v. *Atlantic Co.*, 40 F. Supp. 654 (N. D. Ga.), affirmed, 131 F. (2d) 518 (C. C. A. 5). See also *Rahgo* v. *Cities Service Oil Co.*, 177 Misc. 1059, 33 N. Y. S. (2d) 42 (Munic. Ct. N. Y. City, 1942); *Campbell* v. *Mandel Auto Parts Corp.*, 31 N. Y. S. (2d) 656 (Sup. Ct. N. Y., N. Y. Co., 1941); *Gaskin* v. *Odell Coleman and Sons*, 5 Wage Hour Rept. 581, 584 (C. C. Ky. Mercer Co., 1942). Contra: *Walling* v. *James V. Reuter, Inc.*, 137 F. (2d) 315 (C. C. A. 5), judgment vacated 321 U. S. 671.

move in commerce is to "produce" a subject of commerce in the most literal sense. Indeed, what happens meets precisely even the interpretation that petitioner has placed on the definition of "produced." The function of the definition, petioner says (Br. p. 34), is to preclude one who processes goods manufactured by another from claiming that he is not a producer. Prior to its transmission petitioner "processes" the message—it converts the message into a wholly different form—and therefore petitioner is, although not the orignator, precluded by the definition from claiming that it is not a producer of goods.

The remainder of petitioner's argument on this point is devoted only to showing that "handling" by a carrier—mere transportation—does not constitute production (Br. p. 34). But if we assume this to be true, it does not help petitioner. For petitioner does not merely transport messages. As the court below pointed out (R. 36), "there is not the least similarity between what the defendant [petitioner] does and the transportation of goods by a common carrier." The message never leaves the originating office in the form in which it is received. It is changed into something wholly different; and the activities which bring about the conversion constitute working on the message whether the message be regarded as the intelligence or the media in which it is conveyed.

3. *Petitioner "ships" goods within the meaning of Section 12 (a)*

The verb "ship" is an imprecise word meaning little more than to send or to transport.[2] Originally it meant to put aboard a vessel, but plainly that is not the meaning here. Section 12 (a) provides that "no producer * * * shall ship or deliver for shipment * * *." Hence "ship" cannot be viewed as referring only to delivery to a carrier for transportation, as excluding transportation by the producer itself. This construction, for which petitioner seemingly contends (Br. p. 36), would subvert the Act by opening interstate commerce to the products of child labor provided only that the producer itself carries them across State lines.

The truth is, we submit, that "ship" is a word that normally takes its color from its context. Section 12 (a) was designed to exclude from the channels of interstate commerce every subject of commerce of any character worked on in an establishment in which child labor is employed. The definitions of "goods" and "produced" bear witness to this purpose. Since "ship" is not de-

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[2] Funk and Wagnalls' New Standard Dictionary defines the verb "ship" as meaning "to send by any established mode of transportation; as, to ship goods by rail or express." The definition given in Websters' New International Dictionary is "to put or receive on board of a ship, or other vessel, for transportation; to send by water; to cause to embark; to transport, or commit for transportation."

fined, it must be read in its general sense of "send" or "transport" in order to give effect to these definitions rather than in a restricted sense which would deprive "goods" and "produced" of the broad meanings which Congress has expressly given them. Petitioner "sends" the messages, and it does no violence to language to say, as this Court has said, that it "transports" them. *Western Union Tel. Co.* v. *Texas*, 105 U. S. 460, 464. Since the messages are "goods," there can be no doubt that petitioner "ships" them in commerce when its employees send them across State lines.

The difficulties which petitioner sees in our interpretation of Section 12 (a) are in some cases non-existent and in others merely the sanctions which the Congress deliberately adopted. For example, petitioner argues (Br. p. 43) that if messages are "goods," an employer of child labor cannot send telegrams or use the mails across State lines. Likewise, petitioner asserts that if we are right it cannot send "telegrams about its own business, ship its poles or office supplies, or use the mail" if it continues to employ children under 16 (*ibid*). We agree with both conclusions. The Congress deliberately closed the channels of interstate commerce to those employers who seek to profit by the exploitation of children. But we cannot accept petitioner's conclusion that Congress agreed with "the point of view of manage-

ment" that "fifteen is probably the optimum age for a messenger" because management requires boys who do "not expect immediate promotion" and are "available in the labor market at rates of pay generally less than the minimum of twenty-five cents an hour" (Br. p. 44). This was the social philosophy which Congress rejected. Such were the very evils which Congress intended to strike down. Petitioner's arguments illustrate the crying need for the prohibition which the courts below found in Section 12; they do not show that those courts were in error.

Petitioner argues (Br. p. 42) that telegrams cannot be goods because, if they were, petitioner would be required to refuse to transmit telegrams produced by the sender in an establishment in which oppressive child labor was employed.[1] But Section 15 (a) (1) provides—

> * * * no provisions of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation.

Although petitioner now contends that this exemption does not ever apply to it (Br. p.

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[1] Or telegrams in the production of which the sender had violated the wage and hour provisions of the Act. See the first part of Section 15 (a) (1).

42), it made just the opposite contention in the circuit court of appeals, arguing that the exemption had the effect of rendering the Act wholly inapplicable to it. (See R. 35.) Both these contentions are unsound. The manifest purpose of the exemption is to protect from liability under the Act, notwithstanding its broad definition of "produced," persons subject to a common carrier's obligation to accept goods for transportation who transport goods which others have produced in establishments in which oppressive child labor was employed. In other words, a common carrier which does not itself employ oppressive child labor is not to be viewed as a producer of the goods it transports merely because in transporting those goods it necessarily "handles" or "works on" them; the meaning of the words "not produced by such common carrier" in this section must be read, in order to give the exemption meaning, as thus restricted by their context in spite of the express definition of "produced" in Section 3 (j). Petitioner, therefore, can with impunity, so long as it does not itself employ oppressive child labor, transmit telegrams for persons who do.[1] In the present case oppressive

[1]Although there may be a question as to whether petitioner is a "common carrier" engaged in "transportation" for some purposes (see Pet. Br. p. 36), clearly this proviso was intended to protect any enterprise which, pursuant to a legal obligation, carried the products of another who might not have complied with the law's standards.

child labor is employed, not by the sender of the telegram, but by petitioner itself. Hence the exemption, though available to petitioner, does not aid it here.

We submit, therefore, that as a matter of textual analysis, petitioner must be held to have violated the Act. We are not seeking to extend its coverage by implication. The express statutory definitions, read in their plain and ordinary meaning, compel the conclusion that petitioner, by working on messages in its public offices and then sending them across State lines, "ships" in commerce "goods" "produced" in establishments in which petitioner admittedly employs oppressive child labor. If this gives "goods" and "produced" meanings broader than their normal connotations, those connotations must yield to the statutory definitions. *Fox* v. *Standard Oil Co.*, 294 U. S. 87; *Emery Bird Thayer Dry Goods Co.* v. *Williams*, 98 F. (2d) 166 (C. C. A. 8).

B. THE LEGISLATIVE HISTORY OF THE ACT IS CONSISTENT WITH THE INTENTION, SHOWN BY THE WORDS, TO ELIMINATE OPPRESSIVE CHILD LABOR AT ESTABLISHMENTS SUCH AS PETITIONER'S

We have shown above that the present case is plainly covered by Section 12 (a) if the words of that section are given the meaning which Congress declared them to have. The courts may refuse to apply or may limit those definitions only if it can be demonstrated from other materials that the words do not faithfully reflect the Congressional

intention. In other words, the definitions supplied by Congress must control, even though they reach establishments customarily described as engaged in commerce, rather than in the production of goods for commerce, unless the legislative history of the Act shows affirmatively that, as petitioner contends, Congress intended that no child labor in commerce itself should be covered by the Act.

When the bill that became the Fair Labor Standards Act was introduced, there was general agreement that Congress should eliminate child labor wherever federal power would reach. The evil had long been recognized.* The need for fed-

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*The first minimum age law in this country was adopted by Pennsylvania in 1848. Session Laws 1848, P. L. 278. As industrialization expanded, awareness of the child labor problem grew. By the turn of the century, 24 States had enacted minimum age standards for various classes of activity. *History of Labor in the United States*, Commons and Associates, Vol. 3, p. 403, MacMillan Company, New York, 1935.

In 1906 the first bills were introduced to deal with child labor on a national scale. Ten years later Congress enacted the first Federal Child Labor Law, which extended only to factories, manufacturing establishments, canneries, workshops, mines and quarries. 39 Stat. 675, c. 432. This law was declared unconstitutional. *Hammer* v. *Dagenhart*, 247 U. S. 251. Congress immediately sought to regulate child labor by the use of its taxing power: 40 Stat. 1138, c. 18. This Act also was declared unconstitutional by the Supreme Court. *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20.

In 1924 Congress submitted to the States, for ratification, a proposed amendment to the Constitution, authorizing Congress "to limit, regulate, and prohibit the labor of persons under eighteen years of age." 43 Stat. 670. It has been

eral action was known. In his message to Congress, the President condemned without limitation the employment of children: "A self-supporting and self-respecting democracy can plead no justification for the existence of child labor * * *" (H. Doc. 255, 75th Cong., 1st sess., p. 2). In the hearings, the testimony developed a program of abolishing child labor and its products from the national sphere by statute and from the intrastate realm by pressing the proposed constitutional amendment. Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st sess., pp. 390–391, 396–402. And on the floor, it was said without contradiction that the Act would eliminate child labor from industry. E. g., 83 Cong. Rec. 9263–9264.

Nothing in the legislative history suggests that the employment of children under 16 to deliver messages in any business was regarded as an exception to this general purpose. The reference

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ratified by 28 States. *Annual Report of the Secretary of Labor*, Fiscal Year Ended June 30, 1939, p. 159.

Under the National Industry Recovery Act, 576 codes were adopted, each of them containing minimum age provisions. After the N. R. A. was declared unconstitutional in *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, the number of children leaving school for work sharply increased. *Trend of Child Labor 1927–1936*, Monthly Labor Review, December 1937, p. 1375, published by the United States Department of Labor. Public concern over the child labor question was reflected during the 1937 session of Congress by the introduction of nearly 50 bills affecting child labor.

to messengers in Section 14 of the Act shows that Congress was aware that the Act would reach persons so employed; and it will not be denied that Congress intended the child labor provisions of the Act to apply to messengers working in or about manufacturing establishments which ship their goods in commerce.[6] The practice of employing children as messengers was equally open and notorious, and no less an evil, in the communications industry. The problem confronting both the President and Congress was not whether or how far child labor should be eliminated from industries subject to federal regulation; it was, how far does federal power reach and how can it be used most effectively to abolish the evil. Common sense alone repels the suggestion that Congress intended to eliminate the employment of children from establishments manufacturing goods for commerce—action then of doubtful constitutionality (*Hammer* v. *Dagenhart*, 247 U. S. 251)—and to leave unimpaired the equal evil of child labor in industrial activities which fall within the language of the Act but also constitute interstate commerce proper—activities peculiarly within the competence of Congress to regulate. Had this been the case, surely some statement to that effect would have been made either by an exception in

[6] See colloquy between Senator Johnson of Colorado and Senator Barkley. Hearings before the Senate Committee on Interstate Commerce, 75th Cong., 1st sess., on S. 592, S. 1976, S. 2068, S. 2226, and S. 2345, p. 128.

the Act, or in the hearings, or in the debates. But no such statement was made. The intention to cure the evil was general, and the Act should be construed to provide as broad a remedy as the words permit. Cf. *United States* v. *American Trucking Assns.*, 310 U. S. 534; *Missel* v. *Overnight Motor Co.*, 126 F. (2d) 98, 103 (C. C. A. 4), affirmed, 316 U. S. 572.

Petitioner finds evidence of an intention not to regulate the employment of child labor in its operations in the omission from Section 12 of any words prohibiting the employment of child labor "in commerce." It points to the contrast between Section 12 and Sections 6 and 7, the wage and hour provisions, which do expressly regulate both employment "in the production of goods for commerce" and employment "in commerce"; Congress, it is said "refused to declare any national policy with respect to child labor, to prohibit child labor in commerce, or to supersede state regulation with any uniform national rule" (Br. p. 7). Manifestly, this is an overstatement. Congress decided not directly to *prohibit* child labor at all, whether in commerce, in the production of goods for commerce, or in industries affecting commerce. Instead it decided to rely on an indirect sanction—to prohibit shipment in commerce of goods produced in establishments where child labor was employed. In Section 3 (l) Congress did declare a national policy of eliminating the employment of children under

16 years of age from all establishments sending their goods in interstate commerce. This uniform national rule was urged by the leading advocates of child labor legislation, and was adopted over the opposition of those who wished to leave the field wholly to diverse State regulations by enacting legislation which would do no more than subject interstate goods to the child labor laws of the State of destination.[7]

It is equally plain that Congress did not decide that no child labor in industries engaged in commerce itself should be covered by the Act. True, since Congress had determined not to prohibit child labor directly, it did not speak in section 12 of establishments engaged "in commerce," and accordingly that section does not apply to those establishments which, although they engage in commerce, do not "produce" and "ship" any "goods" within the meaning of the Act. But since the concept "in commerce," and the concept "in the production of goods for commerce" as defined by the Act, are not mutually exclusive, a single employee may be engaged in an activity which either phrase will properly describe. A

[7] Joint hearings before Senate Committee on Education and Labor and House Committee on Labor, 75th Cong., 1st sess., on S. 2475 and H. R. 7200: testimony of Mrs. Larue Brown, representing the National League of Women Voters, pp. 390–391; of Mr. Courtenay Dinwiddie, General Secretary, National Child Labor Committee, pp. 399–400; statement for the National Federation of Business and Professional Women's Clubs, Inc., by Mrs. Opal D. David, p. 395.

business activity carried on at one establishment may constitute both production for commerce and commerce itself. E. g. *Fleming* v. *Kirschbaum Co.*, 124 F. (2d) 567 (C. C. A. 3), affirmed, 316 U. S. 517. On petitioner's theory the job of shipping clerk or elevator operator, when both in commerce and producing for commerce within the statutory definitions, would be exempt from the child labor provisions because it falls in the two classes rather than in the latter alone. It cannot be supposed that Congress intended that a business covered by the words it did use should be viewed as outside the Act because that business would also have been covered by other words which Congress did not use as a result of its decision to rely upon an indirect sanction rather than a direct prohibition.

The legislative history of the Act contains no evidence of Congressional intent warranting a restriction of Sections 3 (i) and 3 (j) as applied to the child labor provisions. The original Black-Connery bill (Sections 7 (c) and 2 (a) (18)) and the bill reported by the Senate Committee on Education and Labor (Sections 7 (2) and 2 (a) (11)) prohibited the employment of child labor in interstate commerce or in the production of goods intended for shipment in interstate commerce. On the floor of the Senate, however, a change was made. The Senate struck out all the provisions of the Committee bill dealing with child labor and

substituted the provisions of the Wheeler-Johnson bill (S. 2226, 75th Cong., 1st sess.) previously reported (S. Rept. 726, 75th Cong. 1st sess.) by the Committee on Interstate Commerce. See 81 Cong. Rec. 7949–7951. This substitute section contained four regulations: (1) it subjected the products of child labor to the laws of any State into which they might be shipped; (2) it forbade the transportation in interstate commerce of the products of child labor intended to be sold in violation of the laws of any State; (3) it required that all products of child labor shipped in interstate commerce bear a label showing the kind of work in which the children were employed; and (4) it prohibited the transportation in interstate commerce of "goods, wares or merchandise" produced "wholly or in part through the use of child labor." It was the first three provisions that were regarded as the heart of this proposal. The Senate adopted them on the constitutional theory that even if Congress could not set its own standards for child labor—could not validly enact the fourth provision—it did have power under the constitution to supplement State laws by prohibiting interstate sales of goods made by children under conditions outlawed by the State of destination.[8] (See 81 Cong. Rec. 7663–7667.)

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[8] See *Kentucky Whip & Collar Co.* v. *Illinois C. R. R. Co.*, 299 U. S. 334; *Whitfield* v. *Ohio*, 297 U. S. 431.

The bill as passed by the House on May 24, 1938 proceeded on the simple, straightforward theory that the Congress should squarely challenge the old decision in *Hammer* v. *Dagenhart*, 247 U. S. 251, by prohibiting the shipment of goods from establishments in or about which child labor was employed and should also go further and directly prohibit the employment of children by any employer engaged "in commerce in any industry affecting commerce."[9] Section 10 provided:

> SEC. 10. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of the goods therefrom any oppressive child labor has been employed * * *.
>
> (b) No employer engaged in commerce in any industry affecting commerce shall employ any employee under any oppressive child labor condition.

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[9] This phrase was intended to cover both employers engaged in commerce and employers engaged in an industry affecting commerce. Section 3 of the House bill defined separately "employer engaged in commerce" and "industry affecting commerce," as follows:

"(j) 'Industry affecting commerce' means an industry with respect to which an order issued under section 6 is in effect.

"(k) 'Employer engaged in commerce' means an employer in commerce, or an employer engaged, in the ordinary course of business, in purchasing or selling goods in commerce." (See S. 2475, 75th Cong., 3rd sess., print of April 20, 1938, p. 50.)

The first issue before the Conference Committee affecting the child labor provisions was whether to accept the theory of supplementing State laws upon which the Senate bill was primarily based or the national standard theory of the House. The House bill was made the basis for the conference report (H. Rept. 2738, 75th Cong., 3d sess., p. 32). Accordingly, there is no merit in petitioner's argument that Congress did not establish any national policy concerning child labor.

The second issue before the Conference Committee affecting the child labor provisions was common to the entire bill. The theory of the House bill, running through the wage, the hour and the child labor provisions equally, was that the legislation should apply to employment "in commerce in any industry affecting commerce" [10] with the Secretary of Labor empowered to determine in accordance with criteria supplied by Section 6 whether an industry was one "affecting commerce." The Conference Committee, however, decided to eliminate the broad delegation of administrative discretion to determine what industries affect commerce. A corresponding change was made in the wage and hour provisions, which became Sections 6 and 7; they were confined to employment "in commerce" and "in the production of goods for commerce." The Conference Committee then struck out Subsection 10 (b)

[10] See n. 9, supra, p. 30.

quoted above; it explained that it did this for the same reason that impelled it to change the wage and hour provisions. The Conference Report states (H. Rept. 2738, 75th Cong., 3d sess., p. 32):

> Section 12 of the conference agreement adopts the child labor provisions of the House amendment, with one exception. In view of the omission from the conference agreement of the principle of section 6 of the House amendment [the delegation of authority to the Secretary to determine what industries affect commerce], subsection (b) of section 10 of the House amendment has been omitted.

Thus the deletion of Section 10 (b) was the result of the intention to eliminate from the entire bill administrative discretion to determine what industries affect commerce.

The Conference Committee did not, however, when it eliminated Section 10 (b), substitute for it provisions forbidding the employment of children in commerce and in the production of goods for commerce. No explanation of its decision to rely wholly upon the indirect sanction of a prohibition of shipment in commerce is given in the Conference Report or anywhere else. Petitioner views this decision as indicative of an intent that the child labor provisions in their present form should not apply to a business engaged in commerce even though it also ships in commerce goods produced in an establishment employing child labor. But the same reasoning would require the absurd con-

clusion that the present child labor provisions are inapplicable also to any business which "affects commerce." The prohibition which the Conference Committee eliminated applied not only to employment in commerce but also to employment in "any industry affecting commerce." Petitioner ignores this fact and in its brief (pp. 16 ff.) repeatedly refers to Section 10 (b) as "the prohibition of child labor in commerce."

Petitioner suggests four reasons why Congress, and the Senate in particular, refused to enact a "prohibition of child labor in commerce" (Br. pp. 16 ff.). If the direct prohibition of child labor in Section 10 (b) had been limited to employers engaged in interstate commerce, no one of these reasons would explain why it was not enacted into law. And certainly they do not support petitioner's argument that the deletion of this Section manifested a purpose to exclude from the child labor provisions employers engaged in commerce, because they were so engaged, notwithstanding the fact that their activities would otherwise be reached by Section 12. Actually all four reasons are patently untenable.

The first is that Congress doubted its constitutional power. It is impossible to believe that Congress, although it was willing to assert control of the interstate carriage of goods made by child labor establishments—an act of doubtful constitutionality—shrank nevertheless as a result of constitutional scruples from asserting its plain

power to control the employment of child labor in interstate commerce. Petitioner's second and third reasons are that Congress refused to regulate child labor in interstate commerce in order to avoid interference with state authority and to encourage ratification of the child labor amendment. But the present Act in effect imposes a uniform sixteen-year minimum-age requirement on the employment of children in establishments producing goods for interstate commerce. Surely in the face of these provisions it cannot be said that the factors mentioned would have caused Congress deliberately to exclude child labor *in* interstate commerce. Petitioner's fourth explanation is that there was no reason to prohibit the employment of children in interstate commerce. But despite the writings of Horatio Alger, Jr., to which petitioner refers (Br. p. 21), it seems quite plain that Congress did not regard the employment of children as messengers as an unmixed blessing. See pp. 24–25, *supra*.

There is a more reasonable explanation for the failure of Congress to make the same change in the child labor provisions that it made in the wage and hour provisions. The leading adherents of the child labor provisions were insistent that coverage should depend on the interstate character of the establishment rather than on the nature of the employment of each partic-

ular child."[11] The Conference Committee accepted this view. The test of coverage in the wage and hour provisions—any employee engaged in commerce or in the production of goods for commerce—therefore could not be used because it was too narrow. And the failure to insert a provision directly prohibiting child labor in or about either establishments carrying on interstate commerce or establishments producing goods for commerce may well have been due to doubt whether Congress could constitutionally forbid the employment by such establishments of children who did not themselves engage in commerce or in the production of goods for commerce. It is also possible that the omission resulted from the realization that the indirect sanction of forbidding interstate shipment coupled with the broad statutory definitions of "goods" and "produced" and the "in or about" an establishment test would effectively eliminate child labor from commerce itself and from the production of goods for commerce in all important cases.

Whatever the explanation of the absence from the Act of a direct prohibition of child labor—

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[11] Hearings before the Committee on Interstate Commerce, U. S. Senate, 75th Cong., 1st sess., on S. 592, S. 1976, S. 2068, S. 2226, and S. 2345, May 12, 18, 20, 1937, comment of Senator Barkley, p. 128; testimony of Mr. Courtenay Dinwiddie, General Secretary, National Child Labor Committee, pp. 98–99.

even if it resulted from inadvertence—the legislative history as a whole makes it clear that the omission was not the result of a deliberate purpose to leave unaffected employment of child labor in interstate commerce under such circumstances that the tests of coverage set forth in the Act are satisfied. If any inference is to be drawn from the legislative history, it is that Congress believed the scope of Section 12 (a) to be as broad as the coverage of the wage and hour provisions. No purpose was to be served by making it narrower. An important social purpose would be partly defeated by cutting it down. While this is no ground for expanding Section 12 to cover interstate activities not comprehended by the language employed by Congress, it does require that the statutory definitions of "produced" and "goods" be given their full scope in order to gain the end which Congress believed it had achieved. To apply Section 12 to petitioner is not to extend the Act by implication; it is to give the definitions the natural and established meaning of their words and to carry out the intention of the Congress.

We think it clear that the legislative history clearly does not support the inferences petitioner seeks to draw from it. Since the Act literally read reaches petitioner, the burden is on it to show that the legislative history requires a departure from the literal meaning. If the Court should decide that the legislative material is inconclusive in either direction, the language of the

Act, read in the light of the general legislative purpose, should prevail. Both language and purpose demonstrate that activities within the broad statutory definitions should be subjected to the child labor provisions even though the employer be in interstate commerce.[12]

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[12] In its petition for certiorari, petitioner dwelt at some length on the form of the district court's decree. The decree (R. 31) restrains it from—

"Transmitting in interstate commerce * * * telegraph or other messages or any other goods produced by or for defendant * * * in any establishment * * * in or about which within thirty (30) days prior to the transmission or other removal of such messages or other goods therefrom, there shall have been employed * * * any oppressive child labor * * *."

Petitioner states that this is an "injunction which neither the plaintiff nor the court could possibly permit to be obeyed" (Pet. 7, cf. Pet. 3). Except for the initial 30-day period, compliance with the injunction will require petitioner to do nothing except cease the oppressive employment of children whom Congress has declared too young to work (section 3 (l)). In the future, petitioner may protect itself against any unwitting violations of the Act or the decree by requiring all minors to present certificates of age. (Section 3 (l)). It may even be that the 30-day period will present no problem, for some time will elapse before the mandate goes down, in which petitioner may discharge all under-age children in its employ, and the 30-day period may then elapse before the decree becomes effective. But if the period intervening before the decree becomes effective is not long enough to enable petitioner to make a reasonable adjustment of its employment practices and continue the shipment of messages, then either the circuit court of appeals or the district court may properly stay the injunction further in order to permit the transmission of messages until petitioner has a reasonable time to comply. See *Standard Oil Co. of New Jersey* v. *United States*, 221 U. S. 1, 81; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 187–188.

CONCLUSION

The judgment of the circuit court of appeals should be affirmed.

Respectfully submitted.

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OCTOBER 1944.

U. S. GOVERNMENT PRINTING OFFICE : 1944

SUPREME COURT OF THE UNITED STATES.

No. 49.—October Term, 1944.

The Western Union Telegraph Company, Petitioner, *vs.* Katharine F. Lenroot, Chief of the Children's Bureau, United States Department of Labor.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 8, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

A decree of the District Court in substance restrains the Western Union Telegraph Company from transmitting messages in interstate commerce until for thirty days it has ceased employment of messengers under the age of sixteen years and of certain others between the ages of sixteen and eighteen. This was thought to be required by the Fair Labor Standards Act of 1938. The Circuit Court of Appeals affirmed, and we granted certiorari. — U. S. —.

The Western Union Telegraph Company collects messages in communities of origin and dispatches them by electrical impulses to places of destination where they are distributed. Messengers are employed in both collection and distribution. A little under 12 per cent of the messenger force is under sixteen years of age, and about .0033 per cent are from sixteen to eighteen years of age, engaged in the operation of motor vehicles, scooters, and telemotors. These messengers are employed only in localities where the law of the state permits it. It is not denied that both groups are engaged in oppressive child labor as defined by the Federal Act,[1] if it applies. Whether it does so apply is the only

, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being ...."

[1] [illegible] a child to [illegible] the age of sixteen years in an occupation other than manufacturing or mining) in any occupation [illegible] 29 U. S. C. § 203 (), June 25, 1938, c. 676, § 3 (), 52 Stat. 1061.

against employment of child labor in conducting interstate commerce.[2] It is conceded, too, that language appropriate directly to forbid this employment was proposed to Congress and twice rejected.

The major events of the recorded legislative history of this Act so far as relevant were as follows: After the President's labor message of May 24, 1937 (House Doc. No. 255, 75th Cong., 1st Sess., p. 2) reminded Congress that "A self-respecting and self-supporting democracy can plead no justification for the existence of child labor," bills carefully drawn to carry out his recommendations were introduced in the Senate by Senator Black and in the House by Representative Connery. These bills expressly and comprehensively prohibited the employment of child labor either in interstate commerce or in production of goods intended for shipment in interstate commerce, as well as prohibiting shipment of goods made by child labor.[3] When the Black bill came to vote in the Senate, however, all of its child-labor provisions were stricken, and the provisions of another bill recommended by the Committee on Interstate Commerce were substituted.[4] This prohibited the shipment in interstate commerce of goods made by child labor, but it did not prohibit the use of it in carrying on the commerce itself. Thus the Senate deleted a direct prohibition of the employment under question here. But

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[2] The Act provides: "After the expiration of one hundred and twenty days from the date of enactment of this Act, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed . . . ." § 12(a), 29 U. S. C. § 212(a).

[3] "Sec. 7. It shall be unlawful for any person, directly or indirectly—

(1) to transport or cause to be transported in interstate commerce, or to aid or assist in transporting, or obtaining transportation in interstate commerce for, or to ship or deliver or sell in interstate commerce, or to ship or deliver or sell with knowledge that shipment or delivery or sale thereof in interstate commerce is intended, any unfair goods; or

(2) to employ under any substandard labor conditions any employee engaged in interstate commerce or in the production of goods intended for transportation or sale in violation of clause (1) of this section." This was the provision in the bill S. 2475 as reported, respectively, by the Senate Committee on Education and Labor, July 6, 1937, and by the House Committee on Labor, August 6, 1937. "Unfair goods" was defined to mean goods produced by any substandard labor condition, and the latter was defined to include child labor. §§ 2(a)(11) and (15).

[4] This was S. 2226, reported in Sen. Rep. No. 726, 75th Cong., 1st Sess. It was incorporated into the Black bill July 31, 1937, 81 Cong. Rec. 7949-51. It provided: "Sec. 4 [§ 27 in the amended Black bill]. It shall be unlawful for any person who—

the House, in turn, struck out all of the child labor provisions of the Senate bill and substituted those of the Connery bill,[5] which was a counterpart of the Black bill. This was much amended, but as passed at length it contained a provision forbidding child labor in interstate commerce "in any industry affecting commerce" and a prohibition of shipment of child-labor-made goods.[6] The Senate, however, did not agree to the House bill, but meanwhile had passed as a separate measure its own child-labor bill as recommended by the Interstate Commerce Committee.[7] This did not prohibit child labor in interstate commerce. In this posture the Fair Labor Standards bill went to conference. The Conference Report says that the Committee "adopts the child labor provisions of the House amendment, with one exception. In view of the omission from the conference agreement of the principle of section 6 of the House amendment, subsection (b) of section 10 of the House amendment has been omitted."[8] The formula covering every employer "in commerce in an industry affecting commerce" had been employed in the wage and hour

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(a) has produced goods, wares, or merchandise in any State or Territory, wholly or in part through the use of child labor, on or after January 1, 1938; or

(b) has taken delivery of such goods, wares, or merchandise in any State or Territory with notice of their character whether by purchase or on consignment, as commission merchant, agent for forwarding or other purposes, or otherwise,

to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting such goods, wares, or merchandise in interstate or foreign commerce or to sell such goods, wares, or merchandise for shipment in interstate or foreign commerce or with knowledge that shipment thereof in interstate or foreign commerce is intended." Other provisions subjected child-labor-made goods to the laws of the states into which they were shipped regardless of their interstate character, forbade transportation into states in violation of their laws, and forbade shipment in interstate commerce of goods not labelled as to their child-labor character. The bill represented the view that several methods of circumventing Hammer *v.* Dagenhart should be tried at the same time, in case any should be held invalid.

[5] See S. 2475 as reported by House Committee on Labor, August 6, 1937, H. R. Rep. 1452, 75th Cong., 1st Sess.

[6] "Sec. 10. (a). No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed . . . .

"(b) No employer engaged in commerce in any industry affecting commerce shall employ any employee under any oppressive child-labor condition." 83 Cong. Rec. 7441; passed, *id.* at 7450 (75th Cong., 3d Sess.).

[7] S. 2226, identical with the child-labor provisions previously incorporated by the Senate in the Black bill in lieu of the latter's child-labor provisions. See note 4, *supra*. 81 Cong. Rec. 9320.

[8] Conference Report, H. R. Rep. No. 2738, 75th Cong., 3d Sess., 32.

as well as the child-labor provisions of the House bill, and § 6 conferred on the Secretary of Labor the power to decide whether an industry was one "affecting commerce." With the elimination of this delegation to the Secretary, the formula was changed in the wage and hour provisions, making them apply to "every employee engaged in commerce or in the production of goods for commerce." Instead of making a corresponding change in the child-labor section, the conference committee dropped the whole clause. No reason for this different treatment of the child-labor section was given.

No controversy appears to have arisen on the floor of Congress as to inclusion of a direct prohibition applicable to interstate commerce. On the contrary, the advocates of the different versions passed by the Senate and House seem to have overlooked the fact that one contained the prohibition and the other did not; controversy was chiefly over whether the Act should simply re-enact the method of the 1916 Act, which had been held unconstitutional, or should hedge by including labelling and other remedies which might have a better chance of being upheld, whether state-issued age certificates should be utilized, how much discretion should be vested in the Department of Labor, and whether particular goods only or all goods from a particular establishment should be excluded from commerce.[9] So far as coverage was concerned, all proponents were aware that any of the suggested versions of legislation would reach only a small fraction of existing child labor.[10]

[9] See 82 Cong. Rec. 1411-14, 1597-98, 1691-95, 1780-83, 1822; 83 Cong. Rec. 7399-7400.

[10] See, *e. g.*, Joint Hearings on Fair Labor Standards, Senate Committee on Labor and House Committee on Education and Labor, 75th Cong., 1st Sess., 382-84; Hearings on Regulation of Child Labor, Senate Committee on Interstate Commerce, 75th Cong., 1st Sess., 60; remarks of Representative Schneider of the House Committee on Education and Labor, 82 Cong. Rec. 1823, 83 Cong. Rec. 7401. The Chief of the Children's Bureau of the Department of Labor presented to the Senate Interstate Commerce Committee figures, based on the 1930 Census, showing the distribution by occupations of child workers between 10 and 15 years:

Occupation	*Number*	*Per cent*
Agriculture	469,497	70.4
Manufacturing and mechanical industries	68,266	10.2
Trade	49,615	7.4
Domestic and personal service	46,145	7.0
Clerical occupations	16,803	2.5
Transportation	8,717	1.3
Extraction of minerals	1,184	0.2
Other (includes public and professional service, forestry, and fishing)	6,891	1.0

Hearings, *supra*, p. 60.

and the chief concern seems to have been to eliminate child labor in mining and manufacturing industries shipping goods in interstate commerce,[11] which was the most objectionable use of child

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Comparable figures based on the 1940 Census (but for the age group 14-17) are as follows:

Occupation	*Number*	*Per cent*
Agriculture, forestry, fishing	459,966	54.3
Mining	2,769	0.3
Construction	10,476	1.2
Manufacturing	**104,023**	**12.3**
Transportation, communication, and other public utilities	12,103	1.4
Trade	109,687	13.0
Personal services	109,628	13.0
Amusement, recreation, and related services	13,013	1.6
Professional and related services	12,128	1.4
Other	12,944	1.5

Pamphlet, *1940 Census Data on Employment and School Attendance of Minors 14 through 17 Years of Age* (Dept. of Labor, Children's Bureau, 1943) 14.

Since agriculture was expressly excluded (and this was true of all versions of child-labor legislation reported to the House and Senate), the child labor clearly covered by the "producing goods for commerce" formula was at most 12-15%, and most of the remainder was in occupations clearly not covered by that formula, such as local retailing and service industries. In this light, the omission of the one or two percent in nonproducing interstate commerce industries, even if deliberate, would not have been incongruous.

The following exchange during the Senate Interstate Commerce Committee hearings is also of interest, in view of the Senate's rejection of the Black-Connery child-labor provisions in favor of the Commerce Committee proposal:

"Miss LENROOT. . . . There has been a decided shift in the employment of children between the ages of 14 and 16 years from factories to miscellaneous occupations in trade and service industries, which would not be covered by any of the bills now pending before this committee, and which involve very often employment of children for long hours at very low wages.

The CHAIRMAN. Let me ask you this question right there: Do you think newsboys should be prohibited from working? I propound that question to you because it has been put up to me.

Miss LENROOT. I think under any powers that I can see that Congress has or that it may be construed to have now, it would be very difficult if not impossible to bring newsboys in.

The CHAIRMAN. But do you think they should be prohibited from such employment?

Miss LENROOT. I think if Congress had broad power to legislate on the subject of child labor it would be desirable to work out some standard which would be somewhat different from factory employment.

Senator MINTON. In other words, you think it is improper to use newsboys on the streets to sell newspapers?

Miss LENROOT. Under a certain age, and under certain conditions; yes. I would make the age somewhat lower than the age for factory employment, however."

Hearings, *supra*, p. 43.

[11] Thus Senator Wheeler, one of the authors of the measure adopted by the Senate, said, "We are trying to give you something of a practical nature that can be passed, that will perhaps not go as far as some of us would like to see it go, but something which we can uphold as constitutional, that will affect child labor, stop it, and prevent it effectively in the factories,

labor.[12] This had been the only object of the earlier legislation which had been held unconstitutional; neither the Act of 1916,[13] held unconstitutional in *Hammer* v. *Dagenhart*, 247 U. S. 251, nor the Act of 1919,[14] held unconstitutional in *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20, had prohibited child labor in interstate commerce, but both applied only to child labor in mines, quarries, mills, canneries, workshops, factories, and manufacturing establishments.

Both parties contend on the basis of legislative history that the omission of a direct prohibition was deliberate; the Company arguing that it was unwanted, the Government that it was believed superfluous. We think that dispassionate reading will not disclose what either advocate sees in this history.

It is nowhere stated that Congress did, and no reason is stated or is obvious why Congress should, purposely leave untouched child labor employed directly in interstate commerce. It is true that no opponent of child labor appeared to want to strike at all of it. Agriculture, which accounts for from one-half to two-thirds of it, was expressly exempted. Child actors, almost negligible in number, were exempted. Telegraph messengers, so far as the evidence reveals, although a familiar form of child labor, were in no one's mind in connection with this prohibition, although the peculiarities of that service were recognized in allowing them under certain conditions to be employed at lower than

particularly in the sweatshops and southern textile mills." "We want to keep them out of the factories where they are being exploited and are in competition with men and in competition with women who need work." Joint Hearings, *supra* note 10, pp. 33-34, 36. Representative Schneider, who was apparently in charge of the child-labor provisions of the Labor Committee's bill on the floor, reminded the members that although the bill went as far as it could, "the child labor that is used *in the production of articles for interstate commerce* constitutes only 25 percent of nonagricultural child labor that exists today," and hence ratification of the child-labor amendment was still essential. 82 Cong. Rec. 1823 (ital. supplied). And Senator Thomas, who was one of the Senate managers in the conference which produced the final bill, interpreted the result of the compromise as follows in his report to the Senate: "Neither House nor Senate yielded its convictions, but both Houses obtained their common objective, which was to abolish traffic in interstate commerce in the products of child labor and in the products of underpaid and overworked labor." 83 Cong. Rec. 9163.

[12] See generally the hearings preceding the enactment of the Child Labor Act of 1916, Hearings on H. R. 8234, House Committee on Labor, 64th Cong., 1st Sess.; Hearings on H. R. 8234, Senate Committee on Interstate Commerce, 64th Cong., 1st Sess.

[13] Act of Sept. 1, 1916, c. 432, § 1, 39 Stat. 675.

[14] Act of Feb. 24, 1919, c. 18, § 1200, 40 Stat. 1057, 1138.

minimum wages under the Act.[15] But whether a majority of Congress, had this question come to its attention, would have regarded messenger service as more like agriculture in being a relatively inoffensive type of child labor or as more like mining and manufacturing, considered more harmful, is a question on which we have no information whatever.

On the other hand, we find nothing to sustain the Government's position that "the omission resulted from the realization that the indirect sanction of forbidding interstate shipment, coupled with broad statutory definitions" would be construed to eliminate child labor from interstate commerce. No such realization appears in any committee report, in the speech of any sponsor of the bills, nor in debate either on the part of those supporting or of those opposing the bills. The only explanation advanced for the hypothesis that Congress deliberately chose indirection instead of forthright prohibition is an assumption that there were doubts of its constitutional power to enact direct legislation. It is true that in *Hammer* v. *Dagenhart*, 247 U. S. 251, this Court had held that an earlier attempt to exclude from interstate commerce products of mines and mills that employed child labor was an invalid attempt to reach employment matters within the control of the states. But even the prevailing opinion in that case expressly conceded that Congress had ample power to control the means by which interstate commerce is carried on. 247 U. S. at 272. There was never a holding or an intimation in this or any other decision of this Court that a direct prohibition of child labor in interstate commerce would not be sustained. Restrictive interpretation in this field reached its maximum in *Hammer* v. *Dagenhart*. It was decided by a closely divided Court and at the time this bill was pending it was undermined by later decisions and was thought to be marked, even then, for consignment to the limbo of overruled cases, a prediction that was shortly fulfilled. *United States* v. *Darby*, 312 U. S. 100. Moreover, the purpose of the proponents of this Act to challenge the decision in *Hammer* v. *Dagenhart* and require this Court to re-examine its soundness is manifest in many ways. It can hardly be supposed that Con-

[15] "The Administrator, . . . shall by regulations or by orders provide for (1) the employment of learners, of apprentices, and of messengers employed exclusively in delivering letters and messages, . . . at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe . . . ." § 14, 29 U. S. C. § 214.

gress, while reasserting a power once denied to it, feared to exercise directly a power often conceded and never denied.

Our search of legislative history yields nothing to support the Company's contention that Congress did not want to reach such child labor as we have here. And it yields no more to support the Government's contention that Congress wanted to forego direct prohibition in favor of indirect sanctions. Indeed, we are unable to say that elimination of the direct prohibitions from the final form of the bill was purposeful at all or that it did not happen from sheer inadvertence, due to concentration on more vital and controversial aspects of the legislation. The most that we can make of it is that no definite policy either way appears in reference to such an employment as we have in this case, no legislative intent is manifest as to the facts of this case which we should strain to effectuate by interpretation. Of course, if by fair construction the indirect sanctions of the Act apply to this employment, courts may not refuse to enforce them merely because we cannot understand why a simpler and more direct method was not used. But we take the Act as Congress gave it to us, without attempting to conform it to any notions of what Congress would have done if the circumstances of this case had been put before it.

II.

The Government brought this action to reach indirectly child labor in interstate commerce by bringing it under the prohibition of Section 12(a) of the Act, which so far as material reads "no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed." Violation of this command is a crime (§§ 15 and 16) punishable by a fine and imprisonment, and threatened violations may be restrained by injunction. The Government in this case sought injunction. Its complaint charges the Western Union with a violation in that "defendant has been engaged in shipping telegraph messages in interstate commerce and in delivering telegraph messages for shipment in interstate commerce, the said goods having been produced in its said establishments in or about which the aforesaid minors were employed, suffered, and permitted to work within thirty (30) days prior to the removal of said goods therefrom."

Contention that this section is applicable to the Western Union is predicated on three steps, viz.: telegrams are "goods" within its meaning; the Company "produces" these goods within the Act because it "handles" them; and transmission is "shipment" within its terms. If it can maintain all three of these positions, the Government is entitled to an injunction; if it fails in any one, admittedly the effort to bring the employment under the Act must fail.

The Government says messages are "goods" because the Act defines "goods" as therein used to include among other things "articles or subjects of commerce of any character." § 3(i). Of course, statutory definitions of terms used therein prevail over colloquial meanings. *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 95. It was long ago settled that telegraph lines when extending through different states are instruments of commerce and messages passing over them are a part of commerce itself. *Western Union Telegraph Co.* v. *James*, 162 U. S. 650, 654. That "ideas, wishes, orders, and intelligence" are "subjects" of the interstate commerce in which telegraph companies engage has also been held. *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347, 356; cf. *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128. It is unnecessary to decide whether electric impulses into which the words of the message are transformed are "goods" within the Act (cf. *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165; *Fisher's Blend Station, Inc.* v. *State Tax Commission*, 297 U. S. 650; *Electric Bond & Share Co.* v. *Securities & Exchange Comm.*, 303 U. S. 419), since the complaint is not based on "shipment" of impulses as "goods" but only of messages. We think telegraphic messages are clearly "subjects of commerce" and hence that they are "goods" under this Act, as alleged in the complaint.

The next inquiry is whether the Western Union Telegraph Company is a producer of these goods within the Act. Congress has laid down a definition that as used in the Act "'produced' means produced, manufactured, mined, handled, or in any other manner worked on . . . ." § 3(j). The Company, says the Government, not only "handles" the message but "works on" it.

The Government contends that in defining "produced" the statute intends "handled" or "worked on" to mean not only handling or working on in relation to producing or making an

article ready to enter interstate transit, but also includes the handling or working on which accomplishes the interstate transit or movement in commerce itself. If this construction is adopted, every transporter, transmitter, or mover in interstate commerce is a "producer" of any goods he carries. But the statute, while defining "produced" to mean "handled" or "worked on" has not defined "handled" or "worked on." These are terms of ordinary speech and mean what they mean in ordinary intercourse in this context. They serve a useful purpose when read to relate to all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce. One who packages a product, or bottles a liquid, or labels, or performs any number of tasks incidental to preparing for shipment might otherwise escape the Act, for in a sense he neither manufactures, produces, or mines the goods. We are clear that "handled" or "worked on" includes every kind of incidental operation preparatory to putting goods into the stream of commerce.

If we go beyond this and assume that handling for transit purposes is handling in production, we encounter results which we think Congress could not have intended. The definitions of this Act apply to the wage and hour provisions, as well as to the child labor provisions. Section 15(a) makes it unlawful to transport or ship goods in the production of which any employee was employed in violation of the wage and hour provisions. But it makes this exception: "except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods *not produced by such common carrier.*" (Italics supplied.) This recognizes a distinction between handling in transportation and producing, which is entirely put to naught by the Government's contention that by definition everyone who handles goods in carriage is thereby made a producer. The exception then is as if it read "the Act shall impose no liability on a common carrier for carrying goods that it does not carry." One would not readily impute such an absurdity to Congress; nor can we assume, contrary to the statute, that "produced" means one thing in one section and something else in another. To construe those words to mean that handling in carriage or transmission in commerce makes one a producer makes one of these results inevitable. Congress, we think, did not intend to obliterate all dis-

tinction between production and transportation. Its artificial definition, if construed to mean that "handling" and "worked on" catches up into the category of production every step in putting the subject of commerce in a state to enter commerce, is a sensible and useful one, not at odds with any other section of the Act. We think the Government has not established its contention that the Western Union is a "producer" of telegraph messages.

A third inquiry remains. Has the Company engaged in "shipping telegraph messages in interstate commerce and in delivering telegraph messages for shipment" as alleged? The learned trial court said, "More troublesome is the question whether the defendant 'shipped' goods in commerce." But he concluded on the basis of our decisions that the defendant was a "carrier of messages" to be compared to a railroad as a "carrier of goods," citing *Telegraph Co.* v. *Texas*, 105 U. S. 460, 464, *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1. He thought "ship" synonymous with "transport" and "convey" and hence held that the Company was "shipping" messages.

The Circuit Court of Appeals, although it sustained the injunction, took a contrary view of the nature of the enterprise. It analyzed the technology of transmitting messages. The message, it said, never leaves the originating office. It is only a text for sending electrical impulses "which are not only not the sender's message, but would be totally incomprehensible to him or to the addressee, if either could perceive them." It said, "From the foregoing it is at once apparent that there is not the least similarity between what the defendant does and the transportation of goods by a common carrier." Thus it cut the ground from under the Government's only allegation of violation: i. e., that the Company is engaged in "shipping" messages. It advanced this theory, apparently, to answer the Company's contention that if it was likened to a carrier, as the District Court thought, it was entitled to the benefit of the carrier's exemption in Section 15(a)(1). We do not think it is necessary for us to resolve the interesting but baffling inquiry as to precisely what, if anything, moves across state lines in the telegraphic process. In its practical aspects, which concern the public, transmission of messages is too well known to require analysis; and in its scientific aspects, which interest the physicist, it is too little known to permit of it.

The statute applies the indirect sanctions of the Act only to

those who "ship" subjects of commerce. It does not, however, define "ship." The Government says, "The verb 'ship' is an imprecise word meaning little more than to send or to transport." The term, not being artificially defined by statute, is from the ordinary speech of people. Its imprecision to linguists and scholars may be conceded. But if it is common in the courts, the marketplaces, or the schools of the country to speak of shipping a telegram or receiving a shipment of telegrams, we do not know of it, nor are examples of such usage called to our attention. Nor, if one departs from the complaint in the case and adopts the theory of the Court of Appeals, do we think either scientist or layman would ever speak of "shipping" electrical impulses. The fact is that to sustain the complaint we must supply an artificial definition of "ship," one which Congress had power to enact, but did not. We do not think "ship" in this Act applies to intangible messages, which we do not ordinarily speak of as being "shipped."

Another consideration convinces us that this Act did not contemplate its application by indirection to such a situation as we have in hand. Its indirect sanctions are well adapted to the producer, miner, manufacturer, or handler in preparation for commerce. They become clumsy and self-defeating when applied to telegraph companies, railroads, interstate news agencies, and the like, as this decree demonstrates. The Western Union is not forbidden by the decree to employ child labor, nor could it be, for it is not so forbidden by the Act. As construed by the courts below, what is prohibited is the sending of telegrams—so long as it employs child labor and for a period of thirty days after it quits. This, as the Company observes, is a sanction that the Court could not permit to become effective. A suspension of telegraphic service for any period of time would be intolerable. Of course, the Government says, the Company could escape its effect except for the thirty-day period by discharging some twelve per cent of its messengers, who are under age but whom neither the Court nor Congress has forbidden it to employ. It also suggests that the thirty-day period may be absorbed in delays. Or, it says, the District Court or Circuit Court of Appeals "may properly stay the injunction further in order to permit the transmission of messages until petitioner has a reasonable time to comply."

Of course literal compliance could be made only by ceasing to send messages, since that is all the decree does or could command.

But the Company could and probably would avoid doing what the decree orders, by doing what it does not and cannot order: viz., discharging the under-age part of its messenger force. This, however, would leave the thirty-day period after our mandate becomes final and goes down, during which the courts must stay the force of the injunction, either candidly or by dilatory tactics, or the Company, by continuing service to the public, would be in contempt. Even if this were done, courts cannot stay the provisions under which the sending of messages during such period is made criminal. We may suppose the Government would not actually prosecute. But that is only because the sanctions of the Act, if applied to such a situation, are so impractical that a violation adjudged by us to be proven by stipulation of the parties as to the facts would be waived. We think if Congress contemplated application of this Act to the Western Union it would have provided sanctions more suitable than to forbid telegrams to be sent by the only Company equipped on a nation-wide scale to serve the public in sending them. Nor will we believe without more express terms than we find here that Congress intended the courts to issue an injunction which as a practical matter they would have to let become a dead letter, or enforce at such cost to the public, if a defendant proved stubborn and recalcitrant. If the indirect sanctions of this Act were literally to be applied to great agencies of transportation and communication, the recoil on the public interest would be out of all proportion to the evil sought to be remedied.

However, the indirect sanction of cutting one's goods off from the interstate market is one which can be applied to producers as we have defined them herein effectively and without injury to the public interest. If such a producer using child labor is refused facilities to transport his goods, competitors usually come in, needs are still supplied, and only the offender suffers. These indirect sanctions can practically and literally be applied to the miner and the manufacturer with no substantial recoil on the public interest, and with no gestures by the courts that they cannot follow through to punish disobedience.

Ascertainment of the intention of Congress in this situation is impossible. It is to indulge in a fiction to say that it had a specific intention on a point which never occurred to it. Had the omission of a direct prohibition of this employment been called

to its attention, it might well have supplied it, for any reason we can see. Congress of course has the right to be indirect where it could be direct and to be obscure and confusing where it could be clear and simple. But had it determined to reach this employment, we do not think it would have done so by artifice in preference to plain terms. It is admitted that it is beyond the judicial power of innovation to supply a direct prohibition by construction. We think we should not try to reach the same result by a series of interpretations so far-fetched and forced as to bring into question the candor of Congress as well as the integrity of the interpretative process. After all, this law was passed as the rule by which employers and workmen must order their daily lives. To translate this Act by a process of interpretation into an equivalent of the bills Congress rejected is, we think, beyond the fair range of interpretation. Declining that, we cannot sustain the Government's bill of complaint.

Reversed.

SUPREME COURT OF THE UNITED STATES.

No. 49.—October Term, 1944.

The Western Union Telegraph Company, Petitioner, *vs.* Katharine F. Lenroot, Chief of the Children's Bureau, United States Department of Labor.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 8, 1945.]

Mr. Justice Murphy, dissenting.

By reading into the Fair Labor Standards Act an exception that Congress never intended or specified, this Court has today granted the Western Union Telegraph Company a special dispensation to utilize the channels of interstate commerce while employing admittedly oppressive child labor. Such a result is reached, to borrow the words of the majority opinion, "by a series of interpretations so far-fetched and forced as to bring into question the candor of Congress as well as the integrity of the interpretative process."

The opinion of the Court demonstrates that the legislative history of the Fair Labor Standards Act is inconclusive insofar as the failure to insert a provision directly prohibiting child labor in interstate commerce is concerned. But that factor is neither determinative nor even significant in the setting of this case. The issue is not whether the child labor provisions of Section 12(a) apply to a company solely engaged in interstate commerce or in the transporting of goods in such commerce. Rather the crucial problem is whether Western Union, in preparing messages for transmission in interstate commerce, may fairly be said to be a "producer" of "goods" which it "ships" in interstate commerce so as to come within the purview of Section 12(a). That Western Union may also be the interstate transmitter of messages is beside the point; it is enough if it is a producer of goods destined for interstate shipment. Indeed, Section 15(a)(1) expressly envisages just such a situation. It provides in part that no common carrier

shall be liable under this Act "for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier," thereby recognizing that if a carrier is actually the "producer" of the "goods" it transports it may be visited with the liabilities of Section 12(a).

In approaching the problem of whether Western Union is a producer of goods shipped in interstate commerce we should not be unmindful of the humanitarian purposes which led Congress to adopt Section 12(a). Oppressive child labor in any industry is a reversion to an outmoded and degenerate code of economic and social behavior. In the words of the Chief Executive, "A self-supporting and self-respecting democracy can plead no justification for the existence of child labor. . . . All but the hopelessly reactionary will agree that to conserve our primary resources of man power, Government must have some control over . . . the evil of child labor. . . ." Message of the President to Congress, May 24, 1937, House Doc. No. 255 (75th Cong., 1st Sess.) p. 2. Congress sought in Section 12(a) to translate these sentiments from rhetoric to law. That it may not have done so to the full limits of its constitutional power is not of controlling significance here. It matters only that courts should not disregard the legislative motive in interpreting and applying the statutory provisions that were adopted. If the existence of oppressive child labor in a particular instance falls within the obvious intent and spirit of Section 12(a), we should not be too meticulous and exacting in dealing with the statutory language. To sacrifice social gains for the sake of grammatical perfection is not in keeping with the high traditions of the interpretative process.

The language of Section 12(a), when viewed realistically and with due regard for its purpose, compels the conclusion that Western Union has been guilty of a violation of the child labor provisions. Oppressive child labor conditions are admitted and the only issue concerns the application of the words "goods", "producer" and "ships" to the activities of Western Union.

1. The opinion of the majority concedes that telegraphic messages are "subjects of commerce," *Gibbons* v. *Ogden*, 9 Wheat. 1, 229-230, and hence are "goods" as defined in Section 3(i) of the Act.

2. The majority holds, however, that Western Union is not a "producer" of goods, even though the term "produced" is defined in Section 3(j) to include "handled, or in any manner worked on." It further holds that the words "handled" or "worked on" refer only to incidental operations preparatory to putting goods in the stream of commerce and that they cannot relate to a "handling" or "working on" which accomplishes the interstate movement in commerce itself (which is said to characterize Western Union's activities). Even if we assume that this distinction is correct, however, it does not preclude Western Union from being described as a "producer". Contrary to the view expressed in the majority opinion, the Government does not ground its case in this respect on a claim that mere transportation of goods by a carrier such as Western Union constitutes a "handling" or "working on" so as to make that carrier a producer. The contention, rather, is that Western Union employees, *prior to the introduction of the messages into interstate commerce*, "work on" and "handle" the messages. And that contention would seem to be justified by the facts.

Before the messages actually move in commerce, Western Union employees aid in the composition of the messages, write them on blanks, mark the written messages, transform them into electric impulses and perform numerous other incidental tasks. In a very real and literal sense, therefore, they "handle" and "work on" a message before it enters the channels of interstate commerce. The uniqueness of Western Union insofar as it acts also as the interstate carrier of these messages does not negative the fact that it actually processes and hence "produces" the messages as a preface to that interstate transit.

3. Finally, the majority does not think that the verb "ship" is applicable to the transmission either of electrical impulses or intangible messages and hence Western Union does not "ship" goods in commerce within the meaning of Section 12(a). As a matter of linguistic purism, this conclusion is not without reasonableness. But proper respect for the legislative intent and the interpretative process does not demand fastidious adherence to linguistic purism. This Court does not require that Congress spell out all types of "goods" or "subjects of commerce" that move in interstate commerce; no more should it require that Congress spell out every verb that may be in usage as to various

goods or subjects of commerce. If the verb actually used by Congress may fairly be interpreted to cover the particular situation in a manner not at variance with the intent and spirit of the statute, no sound rule of law forbids such an interpretation.

As a matter of fact, it is unnecessary to strain reality in order to apply the verb "ship" to the transmission of telegraph messages. The verb is defined by competent authority to mean "to transport, or commit for transportation." Webster's New International Dictionary (2d Ed.). This Court itself has referred to telegraph companies as engaged in "transportation" of messages. *Western Union Tel. Co.* v. *Texas*, 105 U. S. 460, 464. Since messages are "goods" and since Western Union is the "producer" of them, there is no difficulty in saying that it "ships" or "transports" the messages in commerce when its employees send them across state lines.

Such an interpretation and application of the clear statutory words are not only realistic but are in obvious accord with the statutory policy of eliminating oppressive child labor in industries transporting goods and subjects of commerce across state lines. The natural ease with which these words fit the activities of Western Union adds weight to the conclusion that Section 12(a) covers just such a situation as this. There is nothing in the statute or in its legislative background to suggest that telegraph companies are exempt and the consistent administrative attitude has been that no such exemption exists. Child Labor Regulation No. 3, issued by the Chief of the Children's Bureau, U. S. Department of Labor, May 8, 1939; Wage and Hour Field Instructions, June 4, 1942. It is indisputable that the evils of oppressive child labor allow no distinction in favor of the employment of telegraph messengers of tender years. Cf. *United States* v. *Rosenwasser*, 323 U. S. —. Indeed, the reference to messengers in Section 14 of the Act is evidence of an awareness by Congress that the Act would reach such persons. If Congress found it necessary to provide in Section 14 for certain exceptions as to minimum wages for messengers, it seems clear that Congress thought that all other appropriate provisions of the Act applied to all messengers absent specific exceptions. Moreover, even Section 14 makes no distinction between messengers working in and about manufacturing establishments shipping goods in commerce, who presumably still come within the provisions of

Section 12(a) under the majority's view, and those employed by telegraph companies. Under these circumstances we are not justified in delineating an exception to Section 12(a) that Congress itself did not see fit to make explicitly.

A word need be said about the Court's fear of enforcing Section 12(a) against Western Union. Pursuant to the Congressional mandate, the trial court enjoined Western Union from transmitting or delivering for transmission in commerce "telegraph or other messages or any other goods" produced by it in any establishment in or about which within 30 days prior to the transmission there shall have been employed any oppressive child labor. It is said, however, that this is a sanction that we dare not permit to become effective since the suspension of telegraphic service for 30 days would be intolerable. Such a sanction is said to be well adapted to the producer, miner, manufacturer or handler but clumsy and self-defeating when applied to telegraph companies, railroads and the like. Convinced by these considerations that the Act did not contemplate its application to this situation, the Court proceeds to carve out a judicial exception to Section 12(a) for all interstate carriers.

However much we may dislike the imposition of Congressional sanctions against a particular industry or field of endeavor, the judicial function does not allow us to disregard that which Congress has plainly and constitutionally decreed and to formulate exceptions which we think, for practical reasons, Congress might have made had it thought more about the problem. To read in exceptions based upon the nature or importance of the particular industry or corporation is dangerous precedent. If the suspension of telegraphic service for 30 days is so intolerable as to justify lifting the burden of Section 12(a) from the shoulders of Western Union, can it not be argued with equal fervor that a 30-day injunction against interstate shipments by an airplane manufacturer, a munitions plant or some other industry vital to a war or peace time economy would be likewise intolerable? What valid distinction in this respect is there between interstate carriers and manufacturers or producers? Moreover, are we to examine the competitive situation or degree of importance of a particular company to determine the amount of intolerableness which a suspension of interstate transportation might engender? These and countless other legislative problems present themselves when we embark upon a course of fashioning exceptions to a statute

according to our own conceptions of appropriateness of the sanctions of an Act. Such a course is an open invitation to wholesale veto of valid and reasonable legislative provisions by means of judicial refusal to apply statutory enforcement measures. Adherence to the sound rule that inequities and hardships arising from statutory sanctions are for Congress rather than the courts to remedy by way of amendment to the statute is desirable and necessary in such a situation.

We are charged with the duty of interpreting and applying acts of Congress in accordance with the legislative intent. Courts are not so impotent that they cannnot perform that duty and, at the same time, grant stays or other appropriate relief in the public interest should the occasion demand it. See *Standard Oil Co.* v. *United States*, 221 U. S. 1, 81; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 187, 188. Thus if the injunction is granted here against Western Union, we will have vindicated to that extent the public policy against oppressive child labor. If a 30-day suspension of telegraph messages would unduly harm the public interest, a stay of the mandate or of the injunction can be granted until at least 30 days have elapsed during which no oppressive child labor has been employed by Western Union. Thus by fashioning remedies through injunctions and stays we can aid in the elimination of oppressive child labor without undue hardship on the public. This can and should be done without abdicating our judicial function and assuming the role of the legislature.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE join in this dissent.